IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.278 OF 2004

M/s.Associated Constructions. ... Petitioners.

vs.

Hindustan Petroleum Corporation Ltd. .... Respondents.

Mr.R.D.Dhanuka i/b. Ms.S.R.Dhanuka, for Petitioners.

Mr.M.D.Siodia with Ms.P.S.Retiwala i/b. Ramji & Ginwala, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 5th July,2005

P.C.:-

1. By this petition, the petitioner challenges the Award made by the sole Arbitrator dated 17.2.2004. It appears from the record that the learned Arbitrator at the commencement of the arbitration proceedings has disclosed that apart from being the employee of the respondents-company, he was also holding 900 shares of the respondent company. On that disclosure being made, an objection was raised to the appointment of the arbitrator on the ground that he is interested in the respondents. The objection is dated 22.4.2000. There was

objection raised to the appointment of the Arbitrator on other grounds also. The objection was decided by decision dated 20.11.2000. By that decision, the objection was overruled. Thereafter, the parties were heard and the final award was made.

2. At the hearing, the learned Counsel for petitioners submits that the objection in writing as required by provisions of Section 13 of the Arbitration and Conciliation Act has been raised to the appointment of the Arbitrator on the ground that he has pecuniary interest in the respondents-company. It is submitted that the learned Arbitrator has not decided that objection. In paragraph no.13 of the order, he has observed that the learned Advocate appearing for the petitioners waived the objection raised to the appointment of the Arbitrator on the ground that he is an employee and/or shareholder of the respondents company. It is submitted that the observation is absolutely wrong and that at no point of time the objection was waived. It is submitted that in paragraph 15 of the order, the learned Arbitrator has himself observed that though initially the objection was waived subsequently that waiver was withdrawn and therefore, according to the learned counsel for the petitioners, it was for the learned Arbitrator to decide the objection.

3. On the other hand on behalf of the respondents, it is submitted that the objection was raised to the appointment of the sole arbitrator and that objection is dated 22.4.2000. It is submitted that thereafter the written

submissions were filed wherein submissions were made in support of the objection raised as to the pecuniary interest of the sole Arbitrator in the respondents-company. Those written submissions are dated 15.9.2000. Thereafter, the matter was heard on 20.11.2000 and at the time of hearing the objection was waived and therefore, according to the learned counsel for respondents, the petitioners are not right in submitting that the learned Arbitrator has not decided the objection, though the objection was raised.

4. Now it is admitted position that after the sole Arbitrator disclosed that he is a shareholder of the respondents-company, the objection in writing to the appointment was raised. The written submissions in support of that objection were also filed. In paragraph 13 of the order dated 20.11.2000 the learned Arbitrator has observed thus:-

> "The Learned Advocate for the Claimant then categorically stated that his clients were not objecting to my appointment as Sole Arbitrator on the ground that I am an employee and/or shareholder of the Respondents but on the sole ground that my appointment is contrary to the expressed terms of the last portion of Clause 20(1) which I reproduce here: "

The observation quoted above suggests that according to the Arbitrator, the learned Advocate for the petitioners made statement before him that the petitioners are waiving their objection to the appointment of the sole Arbitrator

on the ground of pecuniary interest of the Arbitrator in the respondents-company. However, what has been observed by the learned Arbitrator in paragraph 15(e) of the same order shows that though initially the learned Advocate waived the objection, that waiver was withdrawn and the objection was reiterated. The paragraph 15(e) of the order dated 20.11.2000 reads as under:-

> "(e) Even though the Learned Advocate for the Claimants had categorically stated that the Claimants were not objecting to my appointment on the ground that I am an employee and a shareholder thereby waiving the objections, the Claimants had again raised the objections in their letter which I have treated as Written Submissions."

It is clear from paragraph 15(e) that though initially the learned Advocate for the petitioners had waived the objection, the objection was reiterated before the order dated 20.11.2000 was made. In paragraph 16(b) the learned Arbitrator refers to waiver of the objection in the past tense. The paragraph 16(b) of the order dated 20.11.2000 reads as under:-

> "(b) Having agreed to the mode of appointment of an Arbitrator, I do not think that it is open to the Claimants to go back on the same and object to my appointment. Further, the Claimants had specifically waived the

> objection as to my appointment on the ground that I am employee and a shareholder of the Respondents."

Perusal of this paragraph shows that though initially the objection was waived, before the order dated 20.11.2000 was made the objection was reiterated. It is further pertinent to note here that immediately after coming to know of the order, the petitioners on 5.12.2000 addressed a letter to the learned Arbitrator wherein it was pointed out that the statement in paragraph no.13 of the order is incorrect and objection to the appointment of the sole arbitrator on the ground of pecuniary interest is not waived. In my opinion, as the petitioners have urged before the learned Arbitrator that the statement in his order is wrong, it was for the learned Arbitrator to decide the question whether he has correctly recorded the statement or incorrectly recorded the statement. But perusal of the final Award shows that this issue has not been discussed by the learned Arbitrator in the final Award. In my opinion, as the order dated 20.11.2000 itself shows that when the order was made, waiver of the objection to the appointment of sole Arbitrator on the ground of pecuniary interest was withdrawn, and therefore, the learned Arbitrator was under an obligation to decide that question. The application was made before the final award was passed, therefore, the Arbitrator could have dealt with the application in the final award, but the arbitrator has chosen to ignore the application. As I find that the learned Arbitrator has disclosed his pecuniary interest in the respondents-company and as his appointment was objected to on that ground by the petitioners, he was not

competent to continue as Arbitrator, and therefore, the order dated 20.11.2000 is liable to be set aside. As that order is set aside, the final Award made by the same Arbitrator cannot be sustained. In the result therefore, the present petition succeeds and is allowed. The Award impugned in the petition is set aside. The respondents are directed to pay cost of this petition to the petitioners as incurred by the petitioners. As I find that the learned Arbitrator could not have continued with the Arbitral proceedings, I do not think it necessary to consider other issues that are raised on behalf of the petitioners.